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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,359	06/26/2003	Monika D. Kinstler	EH-10935 (03-361)	7822
34704	7590	02/23/2005	EXAMINER	
BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			JOHNSON, JONATHAN J	
			ART UNIT	PAPER NUMBER
			1725	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,359

Applicant(s)

KINSTLER, MONIKA D.

Examiner

Jonathan Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 8-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1-7-05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7 and 13-19 are drawn to a method of repairing a crack, classified in class 228, subclass 119.
- II. Claims 8-12 are drawn to a brazing paste, classified in class 29, subclass various.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group II and Group I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in welding lap joints.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Barry Kelmachter on 2-10-01 a provisional election was made with traverse to prosecute the invention of Group II, claims 1-7 and 13-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 13-17 are rejected under 35 U.S.C. 102(b) as anticipated by Reeves et al. (5,628,814). Reeves et al. teach a braze paste containing a nickel base alloy material containing boron and chromium (col. 2, ll. 35-41) and a second nickel base alloy material containing chromium and cobalt (col. 2, ll. 30-35); applying said brazing paste to an area of said metal workpiece containing said at least one crack; and subjecting said brazing paste and said workpiece to a brazing cycle by heating said brazing paste and said workpiece (col. 2, ll. 40-55); heating said brazing paste and said turbine engine component to cause said braze paste to flow into and fill said at least one crack (step 52 and 54); wherein said heating step comprises heating said brazing paste and said workpiece to a temperature in the range of 2000 degrees Fahrenheit to 2200 degrees Fahrenheit (col. 5, ll. 25-35); wherein said braze paste forming step providing said first and second nickel base alloy materials in powder form and mechanically mixing said first and second nickel base alloy materials (col. 6, ll. 40-60); wherein said braze paste forming step comprises forming a paste containing from 20 wt % to 60 wt % of the first nickel base alloy material and the balance comprising said second nickel base alloy material. (col. 2, ll. 40-50); rurther comprising prefilling said at least one crack with said second nickel base alloy material (col. 7, ll. 1-10).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-7 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reeves et al. (5,628,814). Reeves et al. teach wherein said braze paste forming step comprises forming a braze paste close to a 1:1 ratio of said first nickel base alloy material to said second nickel base alloy material and wherein said braze paste forming step comprises a mixture having substantially a first nickel base alloy material containing nickel as a major constituent and from 14 wt % to 16 wt % chromium and from 2.4 wt % to 3.0 wt % boron and a second nickel base alloy material containing from 45 wt % nickel to 51 wt % nickel, from 22 wt % to 23 wt % chromium, and from 18.5 wt % to 19.5 wt % cobalt (col. 2, ll. 25-55). It is the examiner's position that the amounts in question are so close that it is prima facie obvious that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. v. Banner*, 227 USPQ 73.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Johnson whose telephone number is 571-272-1177. The examiner can normally be reached on M-Th 7:30 AM-5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on 571-272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jonathan Johnson
Primary Examiner
Art Unit 1725